2001

Douglas Knudsen v. Samuel W. Smith : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

STATE OF UTAH

DOUGLAS KNUDSEN,
Plaintiff-Appellant,

vs.

SAMUEL W. SMITH, Warden, Utah State Prison,
Defendant-Respondent.

Case No. 13666

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE JAMES S. SAWAYA, JUDGE, PRESIDING.

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STATEMENT OF THE NATURE OF THE CASE

The petitioner, Douglas Knudsen, a/k/a Douglas Knuteson, appeals from a judgment of the Third District Court denying appellant's petition for a writ of habeas corpus.

DISPOSITION IN THE LOWER COURT

The appellant, Douglas Knudsen, petitioned the Third District Court for a writ of habeas corpus for release from incarceration in the Utah State Prison. The petition was denied after a hearing conducted before the Honorable James S. Sawaya on March 21, 1974.

RELIEF SOUGHT ON APPEAL

The respondent submits that the judgment of the Third District Court should be affirmed.

STATEMENT OF FACTS

The statement of facts as stated by the appellant is acceptable.

ARGUMENT

POINT I.

APPELLANT'S ARGUMENT IS AN INAPPROPRIATE SUBJECT FOR APPEAL BECAUSE FINAL JUDGMENT WAS NEVER ENTERED ON THAT ISSUE BY THE LOWER COURT.

Appellant argues that his plea of guilty to the crime of burglary was not knowingly and intelligently made because the trial judge did not specifically mention the constitutional rights that are waived through a guilty plea. This issue was not raised or decided in the hearing on habeas corpus before the Third District Court. Appellant's complaint raised the issue that the guilty plea was not intelligently entered because he did not understand the nature of the crime being charged. At no time was the argument advanced regarding failure to mention constitutional rights that are waived by a guilty plea. Therefore, a new issue has been raised on this appeal which was not raised in the court below. The Third Dis-

trict Court, under Judge James S. Sawaya, decided that the plea was intelligently made because appellant knew the nature of the offense charged.

Utah Rules of Civil Procedure, Rule 65B(i), which governs the bringing of habeas corpus petitions, provides:

> "(10) Any final judgment entered upon such complaint may be appealed to and reviewed by the Supreme Court of Utah as an appeal in civil cases."

Since the habeas corpus complaint in the present case did not raise the issue which is presently raised on this appeal, and since no final judgment was made on that issue, an appeal to the Utah Supreme Court is inappropriate.

Rule 65B(i) provides an orderly procedure for bringing habeas corpus actions. The complaint (petition) should set forth each and every claim of violation of constitutional rights. If this is done, all issues can be tested in a hearing before any appeal is taken. The lower court should have the first opportunity to correct constitutional wrongs. When a habeas corpus issue is raised for the first time before the Utah Supreme Court on appeal, the orderly procedure of presentation in a hearing has been bypassed.

The Utah Supreme Court has previously refused to consider an issue which was raised on habeas corpus appeal for the first time. In *Burleigh* v. *Turner*, 15 Utah

2d 118, 388 P. 2d 412 (1968), the Fourth District Court entered an order denying a petition for habeas corpus, and an appeal was taken to the Utah Supreme Court. The Court refused to hear a newly raised issue by saying:

> "Appellant contends in his brief that the failure to appeal the Third District Court's judgment was due to the failure of counsel, appointed by this court, to prosecute the appeal. This matter was not presented in the pleadings or the hearing before the Fourth District Court. It is raised for the first time upon this appeal. Habeas corpus being a civil remedy it is not necessary for this court to consider this point." *Id.* at 120.

Since the appellant in our case did not present the matter of waiver of constitutional rights at the hearing, he should be prevented from raising the issue on appeal.

POINT III.

APPELLANT'S GUILTY PLEA WAS KNOWINGLY AND INTELLIGENTLY MADE.

In Utah, there is a presumption that a plea of guilty is knowingly and intelligently made. A defendant who attacks this presumption must overcome it by showing clearly that he was prejudiced to the extent that he was denied his constitutional rights. *Mayne* v. *Turner*, 24 Utah 2d 195, 468 P. 2d 369 (1970). Respondent respectfully submits that appellant has failed to meet this burden.

An examination of the proceedings which resulted in appellant's incarceration reveals that appellant intelligently and voluntarily entered his plea of guilty. Specifically, he was asked if he understood:

(1) That the crime would not have to be proved beyond a reasonable doubt by his pleading guilty;

(2) That a guilty plea would have the same effect as a jury or court conviction of the crime;

(3) The possible sentence to be imposed (T. 3).

In addition, appellant was asked if he had been promised anything or threatened with any consequences if he did not plead guilty. He answered that he had not. In fact, appellant indicated that his reason for pleading guilty was because he was guilty (T. 4).

The appellant indicated that the decision was his own (T. 4).

Respondent respectfully submits that the above facts show that appellant failed to meet his burden of proof. The very evidence introduced by him in the lower court shows that his guilty plea was voluntarily and knowingly entered.

Appellant argues that a guilty plea is knowingly entered only when three constitutional guarantees are specifically waived. He bases this assertion on his narrow reading of certain dictum found in the case of *Boykin* v. *Alabama*, 395 U. S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 74

(1969). The holding of the Court in the case was that the trial record must reflect that the accused voluntarily and intelligently entered a plea of guilty. In that case, the record was completely silent as to the nature of the accused's guilty plea. In our case, the record is extensive on the intelligence and voluntariness of appellant's plea of guilty.

In a later case, *Brady* v. *United States*, 397 U. S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). Justice White, writing for the majority of the Court restated the holding in *Boykin* saying:

> "The requirement that a plea of guilty must be intelligent and voluntary to be valid has long been recognized (Citation omitted). The new element added in *Boykin* was the requirement that the record must affirmatively disclose that the defendant who plead guilty entered his plea understandingly and voluntarily." *Ibid.* footnote 4, page 747.

None of the United States Supreme Court cases after *Boykin* have required a judge to get a specific waiver of the rights suggested by appellant. See *Brady* v. *United States*, supra; *McMann* v. *Richardson*, 397 U. S. 759 (1970); *Parker* v. *North Carolina*, 397 U. S. 790 (1970); and *North Carolina* v. *Alford*, 400 U. S. 25 (1970).

The United States Court of Appeals, First Circuit, held in *United States* v. *Webb*, 433 F. 2d 400 (1st Cir. 1970), that the specific waiver of certain constitutional

rights was an unnecessary element of a valid guilty plea. In that case, after discussion with counsel, the defendant pled guilty to violating the Dyer Act. He later contended that the court failed to inform him that by pleading guilty, he was waiving certain constitutional rights. The court reasoned that it was self-evident that these rights were being waived, and that it would not add to defendant's understanding to "require the court to recite a ritualistic list of constitutional rights that are obviously being waived." *Id.* at 403.

The United States Court of Appeals, Fifth Circuit, also has held that it is not necessary for the trial court to specifically mention the constitutional rights which are waived by a guilty plea. Their reasoning was that a catechism of constitutional rights that are waived is not compelled by the Constitution and is without precedent from the Supreme Court or elsewhere. *Wade* v. *Coiner,* 468 F. 2d 1059 (5th Cir. 1971); *United States* v. *Frontero,* 452 F. 2d 406 (5th Cir. 1971).

Numerous state courts also do not require that constitutional rights be specifically defined and waived. The Nebraska Supreme Court in *State* v. *Turner,* 186 Neb. 424 425, 183 N. W. 2d 763, 765 (1971), held that the judge in a trial court does not have to tell the defendant every constitutional right, and obtain an expressed waiver of each before the plea can be said to be intelligently made. The court was of the opinion that an item-by-item review of constitutional rights waived when a guilty plea is entered is too extreme a construction of *Boykin,* and

that *the essential point is whether the accused understands the relevant factors involved in a guilty plea.* The Washington Supreme Court similarly held that the mere fact that the trial court failed to advise the respondent, before accepting his plea of guilty, that he thereby forfeited rights incident to trial and failed to further advise him of the maximum sentence which the court could impose upon him, did not render the respondent's guilty plea void on the ground that it was not intelligently made. *Meisbauer* v. *Rhay*, 79 Wash. 2d 505, 487 P. 2d 1046 (1971). Finally, in *People* v. *Jaworski*, 25 Mich. App. 540, 181 N. W. 2d 811 (1970), the Michigan Court of Appeals refused to interpret *Boykin* as requiring the trial court to specifically inform a defendant represented by counsel of certain constitutional rights waived by entering a guilty plea. The court reasoned that *intelligence and voluntariness have nothing to do with waiver of the constitutional rights as mentioned in Boykin,* and that *intelligence means only that the accused has sufficient knowledge of the relevant circumstances and like consequences. Id.* at 554, 817-818.

In *People* v. *Marsh*, Colo., 516 P. 2d 431 (1973), the defendant's guilty plea was acceptable even though he had not been specifically informed that the plea of guilty waived his right to confront accusers and to remain silent during trial. The reasoning for this decision was that the Supreme Court in *Boykin* did not intend to put such "straight jacket formalism upon the process of receiving guilty pleas in state prosecution." *State* v. *Pichard*, 109

Ariz. 65, 505 P. 2d 236 (1973), held that where there is other ample basis to support the plea, the trial judge need not inform the defendant at the time of his plea of the right to confront witnesses and the privilege against self-incrimination. Therefore, case authority does not support appellant's contention that certain constitutional rights must be specifically explained and waived before a plea of guilty can be intelligently entered.

To prevent the possibility of confessed criminals using procedural loopholes to flood the courts with post-conviction proceedings, appellate courts have long strived to avoid imposing excessively formalistic procedural requirements upon judges in the lower courts. For example: The United States Supreme Court in *Miranda* v. *Arizona*, 384 U. S. 436 (1966), qualified its ruling by providing that warnings of rights were not constitutionally required if an adequate substitute could be found. *Id.* at 467. This same policy has been applied to guilty plea cases. The Oregon Court of Appeals held on February 10, 1972, that they will not impose a rigid formula on lower state courts in their determination of the validity of guilty pleas; rather a *judge who accepts a guilty plea must have sufficient latitude to tailor his questions to the needs of the defendant before him. Raisley* v. *Sullivan*, Or. App., 493 P. 2d 745, 747 (1972).

The transcript of the criminal proceedings which are the subject of this appeal clearly show that appellant knowingly and voluntarily plead guilty. The constitutionality of the guilty plea has therefore been established.

CONCLUSION

Appellant has failed to show that his guilty plea was other than knowingly and intelligently entered. Furthermore, he has raised an issue on appeal that was not a subject of the hearing appealed from. For these reasons the respondent respectfully requests this Court to affirm the lower court's ruling denying petitioner's petition for a writ of habeas corpus.

Respectfully submitted,

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